

This letter describes the sale at retail of shelving and signs by a manufacturer. See 86 Ill. Adm. Code 130.1401. (This is a GIL).

June 15, 2001

Dear Xxxxx:

This letter is in response to your letter dated March 2, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

The purpose of this letter is to request an Administrative Ruling from the Illinois Department of Revenue on behalf of our client (hereafter referred to as 'the Company') regarding the application of Illinois sales tax to the purchase of shelving and signage by Illinois retailers for in-store use.

Facts

The Company is a manufacturer of clothing products which are sold on a wholesale basis to distributors and retailers throughout the country. The Company offers its retailer customers a co-operative advertising rebate plan ('co-op plan'), which assists retailers in the purchase of display shelving and visual signage to facilitate and promote the retail sale of its products. The plan is offered on a proportionately equal basis to all retailers in the United States. Participating retailers earn rebates at a rate of 2-4% of qualifying purchases of the Company's clothing products. As retailers make wholesale purchases of its clothing products, rebate funds are accrued by the Company and are held in an individual retailer co-op account until utilized. The rebate funds are restricted in that they may only be used by the retailer to obtain discounts on future purchases of media advertising, visual signage and display shelving.

This discussion is limited to the Company's purchase for resale of display shelving and visual signage which is resold to the retailers for use in their Illinois stores. The display shelving is fabricated of either plastic, steel, aluminum or wood and is designed to be manually assembled in the store and placed on the sales floor for display of the Company's garments. None of this shelving is designed to be a permanent attachment to the building, it is considered to be movable tangible personal property. Likewise, the visual signage is normally paper posters or cardboard signs printed with the Company's brand names which are designed to be placed on or around the display shelving.

Purchases of shelving and signage take place in the following manner:

At the specific request of the retailer, the Company arranges for the wholesale purchase and shipment of shelving and signage. The Company is able to obtain better pricing through quantity discounts from a few shelving and signage manufacturers as opposed to each retailer making its own smaller purchases. Upon shipment, these items are either dropped shipped directly to the retail store or the Company may temporarily hold the items for subsequent distribution to the retail stores. In both cases the Company pays the invoice which it receives from the shelving and signage manufacturer.

Upon resale, a sales invoice is generated by the Company to the retailer for the sales price of the fixtures. In settlement of this transaction, the retailer may utilize accrued rebate funds to obtain a discount on the purchase price. For example, shelving purchased with a cost price of \$100 may be re-sold to the retailer at a discounted price of \$35, which will be itemized on the sales invoice as follows: Shelving cost price...\$100; Less: 65% discount to be deducted from retailer's co-op rebate fund...\$-65; Remainder: 35% payment from the retailer...\$35; Total amount due from the retailer...\$35. The retailer will issue a check for \$35 which will be recognized by the Company as payment in full for the \$100 worth of shelving. If a retailer has insufficient co-op rebate funds to obtain discounts on advertising co-op purchases, the retailer will be billed directly for the full cost of such purchases.

Discussion

The Company resells the shelving and signage to the retailers to sustain and increase garment sales. Upon resale and transfer of possession of the shelving and signage to the retailer, the Company relinquishes all incidents of ownership over such items. After the retailer has used the shelving and signage and they become obsolete, the retailer disposes of them. The Company does not collect or repossess any used shelving and signage.

The Company purchases for resell the shelving and signage. In this scenario the sales price to the retailer is the actual amount paid directly to the Company. In this example that amount is \$35. Furthermore, it is the responsibility of the Company to collect and remit sales tax from the retailer on the sale of these taxable items. The retailer may remit the sales tax using monies from the co-op fund or may apply tax to the sales price upon issuance of the sales invoice.

Summary

Based on the facts and discussion above, we respectfully request a response in the affirmative as follows:

The purchase by the Company of shelving and signage are considered purchases for resale. A resale certificate should be issued by the Company to the shelving and signage manufacturer. As a result, the payment made by the retailer equal to the discounted price of the signage and shelving (in this case 35%) is the total amount subject to Illinois sales tax (not including transportation charges if separately stated). As such, the retailer is responsible for payment of the sales tax on the purchases of the shelving and signage based on the discounted amount paid directly by the retailer,

exclusive of rebates used as discounts on such purchases. Additionally, the Company may apply for a refund on sales taxes previously paid or accrued on such purchases for resale and should collect Illinois sales tax from the retailers on future sales, in a manner consistent with the above analysis.

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We appreciate your consideration in this matter. If you need additional information or, if the state is inclined to disagree with our conclusions as described herein, please contact me prior to issuing your response.

DEPARTMENT'S RESPONSE:

The manufacturer described in your letter would generally be considered to be making purchases for resale of the display merchandise. The manufacturer would be considered to be providing the display merchandise (to the extent of the amount provided in the "co-op plan") as part of the sale of its clothing merchandise. See Boye Needle Co. v. Dept. of Revenue, 45 Ill.2d 484 (1970). The manufacturer may purchase the display merchandise without incurring tax as a sale for resale. See the enclosed copies of 86 Ill. Adm. Code 130.1401 and 130.1405. This analysis would be the same regardless of whether the display merchandise is drop-shipped or is sent directly by the manufacturer.

However, if the manufacturer makes a charge to an Illinois retailer for the display merchandise (such as when a retailer's claim exceeds the retailer's accrued co-op amount - similar to the \$35 payment described in your letter), then the manufacturer is acting as a retailer of that display merchandise apart from its sale of clothing. If the sale occurs in Illinois, the sale would be subject to Retailers' Occupation Tax liability based upon the amount being charged to the Illinois retailer. Even if the sale occurs outside of Illinois, the manufacturer may be required to collect its Illinois customer's Use Tax liability depending upon whether the manufacturer has sufficient sales tax nexus with Illinois.

Section 19 of the Use Tax Act, 35 ILCS 105/19, provides for claims for credit when an amount of tax or penalty or interest has been paid in error to the Department. For your information, we have enclosed a copy of 86 Ill. Adm. Code 150.1401, which sets out the Department's regulations for these situations. Please note that if the manufacturer has not been remitting Retailers' Occupation Tax on the sales of such shelving and signage, the manufacturer owes tax, penalties, and interest in regards to such sales irrespective of any claim for credit filed under the Use Tax Act. However, the Department's Board of Appeals administers a voluntary disclosure program that can provide for limited liabilities for participants who come forward and disclose their liabilities. Please see the enclosed copy of 86 Ill. Adm. Code 210.126 for information about the voluntary disclosure program.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b) described above.

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk
Enc.